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8 Attorneys for Defendants  
HSBC MORTGAGE CORPORATION (USA) and  
9 HSBC BANK USA, N.A.

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 Philip Wong, Frederic Chaussy, and Leslie  
14 Marie Shearn, individually, on behalf of all  
15 others similarly situated, and on behalf of  
the general public,

16 Plaintiffs,

17 v.

18 HSBC Mortgage Corporation (USA);  
19 HSBC Bank USA, N.A.; and DOES 1  
through 50, inclusive,

20 Defendants.

Case No. C 07 2446 MMC [ECF]

**HSBC BANK USA, N.A.'S ANSWER TO  
PLAINTIFFS' FIRST AMENDED  
COMPLAINT**

21  
22 COMES NOW Defendant HSBC Bank USA, N.A. ("HSBC Bank"), and for its  
23 Answer to the First Amended Complaint for Damages, Restitution and Injunctive Relief  
24 ("Complaint") filed by Plaintiffs Philip Wong ("Wong"), Frederic Chaussy ("Chaussy") and Leslie  
25 Marie Shearn ("Shearn"), hereinafter collectively referred to as "Plaintiffs," on behalf of themselves,  
26 the general public, and all others similarly situated, admits, denies, and alleges as follows:  
27  
28

**PRELIMINARY STATEMENT**

1  
2           1.       Answering Paragraph 1 of the Complaint, generally no answer is required to  
3 Paragraph 1, which merely defines the nature of the action, on whose behalf Plaintiffs' claims are  
4 asserted, and against whom Plaintiffs' claims are asserted. HSBC Bank denies that Plaintiffs and  
5 putative class members were or are employed by HSBC Bank USA, N.A., denies the implication  
6 that it engaged in any violations alleged in Paragraph 1, and denies the implication that Plaintiffs or  
7 putative class members were erroneously denied anything referenced in Paragraph 1. Answering  
8 Paragraph 1 of the Complaint, HSBC Bank denies, generally and specifically, each and every other  
9 allegation in Paragraph 1.

10           2.       Answering Paragraph 2 of the Complaint, generally no answer is required to  
11 Paragraph 2, which merely defines on whose behalf Plaintiffs' claims are asserted and information  
12 regarding the statute of limitations. HSBC Bank denies that Plaintiffs and putative class members  
13 were or are employed by HSBC Bank USA, N.A., and denies the implication that it engaged in any  
14 violations alleged in Paragraph 2, as well as the implication that Plaintiffs or putative class members  
15 were erroneously denied anything referenced in Paragraph 2. Answering Paragraph 2 of the  
16 Complaint, HSBC Bank denies, generally and specifically, each and every other allegation in  
17 Paragraph 2.

18           3.       Answering Paragraph 3 of the Complaint, generally no answer is required to  
19 Paragraph 3, which merely defines on whose behalf Plaintiffs' California claims are asserted and  
20 information regarding the statute of limitations. HSBC Bank denies that Plaintiffs and putative class  
21 members were or are employed by HSBC Bank USA, N.A., and denies the implication that it  
22 engaged in any violations alleged in Paragraph 3, as well as the implication that Plaintiffs or putative  
23 class members were erroneously denied anything referenced in Paragraph 3. Answering Paragraph 3  
24 of the Complaint, HSBC Bank denies, generally and specifically, each and every other allegation in  
25 Paragraph 3.

26           4.       Answering Paragraph 4 of the Complaint, generally no answer is required to  
27 Paragraph 4, which merely defines on whose behalf Plaintiffs' New York claims are asserted and  
28 information regarding the statute of limitations. HSBC Bank denies that Plaintiffs and putative class

1 members were or are employed by HSBC Bank USA, N.A., and denies the implication that it  
2 engaged in any violations alleged in Paragraph 4, as well as the implication that Plaintiffs or putative  
3 class members were erroneously denied anything referenced in Paragraph 4. Answering Paragraph 4  
4 of the Complaint, HSBC Bank denies, generally and specifically, each and every other allegation in  
5 Paragraph 4.

6 5. Answering Paragraph 5 of the Complaint, generally no answer is required to  
7 Paragraph 5, which merely defines on whose behalf Plaintiffs' New Jersey claims are asserted and  
8 information regarding the statute of limitations. HSBC Bank denies that Plaintiffs and putative class  
9 members were or are employed by HSBC Bank USA, N.A., and denies the implication that it  
10 engaged in any violations alleged in Paragraph 5, as well as the implication that Plaintiffs or putative  
11 class members were erroneously denied anything referenced in Paragraph 5. Answering Paragraph 5  
12 of the Complaint, HSBC Bank denies, generally and specifically, each and every other allegation in  
13 Paragraph 5.

14 6. Answering Paragraph 6 of the Complaint, generally no answer is required to  
15 Paragraph 6, which merely sets forth the types of relief sought by Plaintiffs. HSBC Bank denies the  
16 implication that it engaged in any violations alleged in Paragraph 6, as well as the implication that  
17 Plaintiffs or putative class members are entitled to the relief referenced in Paragraph 6. HSBC Bank  
18 denies, generally and specifically, each and every other allegation in Paragraph 6.

19 7. Answering Paragraph 7 of the Complaint, generally no answer is required to  
20 Paragraph 7, which merely defines on whose behalf Chaussy's claims are asserted and the basis for  
21 those claims. HSBC Bank denies that it owed or had any other obligation to pay Chaussy wages and  
22 denies the implication that it engaged in any violations alleged in Paragraph 7. Additionally, HSBC  
23 Bank denies, generally and specifically, each and every other allegation in Paragraph 7.

#### 24 THE PARTIES

25 8. Answering Paragraph 8 of the Complaint, HSBC Bank admits only that Wong has  
26 been employed by HSBC Mortgage from approximately December 2005 to present and started as a  
27 Senior Retail Mortgage Lending Consultant and subsequently became a Retail Mortgage  
28 Consultant. HSBC Bank denies that Wong is or ever was employed by HSBC Bank USA, N.A.

1 HSBC Bank lacks sufficient information or belief to respond to the remaining allegations in  
2 Paragraph 8, and on that basis, denies, generally and specifically, each and every other allegation in  
3 Paragraph 8.

4 9. Answering Paragraph 9 of the Complaint, HSBC Bank admits only that Chaussy was  
5 employed by HSBC Mortgage from approximately April 2006 to November 20, 2006 as a Senior  
6 Retail Mortgage Lending Consultant and from November 20, 2006 until his employment was  
7 terminated on approximately April 19, 2007 as a Retail Mortgage Consultant. HSBC Bank denies  
8 that Chaussy is or ever was employed by HSBC Bank USA, N.A. HSBC Bank lacks sufficient  
9 information or belief to respond to the remaining allegations in Paragraph 9, and on that basis,  
10 denies, generally and specifically, each and every other allegation in Paragraph 9.

11 10. Answering Paragraph 10 of the Complaint, HSBC Bank admits only that Shearn was  
12 employed by HSBC Mortgage from approximately February 11, 2002 until August 18, 2003 as a  
13 Loan Production Office Assistant and from approximately August 18, 2003 until January 3, 2005 as  
14 a Senior Loan Production Office Assistant and from approximately January 3, 2005 to October 13,  
15 2006 as a Senior Retail Mortgage Lending Consultant. HSBC Bank denies that Shearn is or ever  
16 was employed by HSBC Bank USA, N.A. HSBC Bank lacks sufficient information or belief to  
17 respond to the remaining allegations in Paragraph 10, and on that basis, denies, generally and  
18 specifically, each and every other allegation in Paragraph 10.

19 11. Answering Paragraph 11 of the Complaint, HSBC Bank admits only that HSBC  
20 Mortgage does business in several states and cities throughout the United States and that it maintains  
21 places of business in several states throughout the United States. HSBC Bank lacks sufficient  
22 information or belief to respond to the remaining allegations in Paragraph 11, and on that basis,  
23 denies, generally and specifically, each and every other allegation in Paragraph 11.

24 12. Answering Paragraph 12 of the Complaint, HSBC Bank denies that HSBC Bank  
25 USA, N.A. is a proper defendant in this matter. HSBC Bank admits the remaining allegations in  
26 Paragraph 12, except with regard to Redwood City, California. HSBC Mortgage denies generally  
27 and specifically, each and every other allegation in Paragraph 12.  
28

13. Answering Paragraph 13, HSBC Bank alleges that Doe defendant pleading is not allowed in Federal Court. HSBC Bank lacks information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint, as it relates to Defendants not yet named, and therefore denies them.

14. Answering Paragraph 14 of the Complaint, Paragraph 14 contains legal argument not requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 14.

## JURISDICTION AND VENUE

15. Answering Paragraph 15 of the Complaint, HSBC Bank lacks information sufficient to form a belief as to the truth of the allegation that each representative Plaintiff signed the necessary consent form to join this lawsuit, and therefore denies this allegation. HSBC Bank denies that there is supplemental or pendent jurisdiction over the Plaintiffs' state law claims as the federal claims are without merit.

16. Answering Paragraph 16 of the Complaint, HSBC Bank lacks information sufficient to form a belief as to the truth of the allegation that a substantial part of the events giving rise to the claims occurred in this district, and therefore denies this allegation. HSBC Bank admits that it operates facilities in San Francisco, Cupertino, Oakland and Fremont, California. HSBC Bank lacks sufficient information or belief to respond to the remaining allegations in Paragraph 16 with regard to HSBC Mortgage, and on that basis, denies, generally and specifically, each and every other allegation in Paragraph 16.

17. Answering Paragraph 17 of the Complaint, HSBC Bank lacks information sufficient to form a belief as to the truth of the allegation that a substantial part of the events giving rise to this dispute occurred in San Francisco, San Mateo, Santa Clara, and Alameda Counties, California and, on that basis, denies the allegations in Paragraph 17.

## COLLECTIVE ACTION ALLEGATIONS

18. Answering Paragraph 18 of the Complaint, generally no answer is required to Paragraph 18, which merely defines the nature of the action, the alleged collective class and on whose behalf Plaintiffs' claims are asserted. HSBC Bank admits that Plaintiffs bring this action

1 under 29 U.S.C. § 216(b) and that Plaintiffs seek to represent the classes of persons described in  
2 Paragraph 18. HSBC Bank denies the implication that it engaged in any violations alleged in  
3 Paragraph 18 and denies the implication that Plaintiffs or putative class members were erroneously  
4 denied anything referenced in Paragraph 18. Answering Paragraph 18 of the Complaint, HSBC  
5 Bank denies, generally and specifically, each and every other allegation in Paragraph 18.

6 19. Answering Paragraph 19 of the Complaint, HSBC Bank denies the implication that  
7 Plaintiffs or putative class members were erroneously denied anything referenced in Paragraph 19  
8 and, on that basis, denies, generally and specifically, all allegations in Paragraph 19.

9 20. Answering Paragraph 20 of the Complaint, Paragraph 20 contains legal argument not  
10 requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and  
11 specifically, each and every allegation in Paragraph 20.

12 21. Answering Paragraph 21 of the Complaint, Paragraph 21 contains legal argument not  
13 requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and  
14 specifically, each and every allegation in Paragraph 21.

15 22. Answering Paragraph 22 of the Complaint, Paragraph 22 contains legal argument not  
16 requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and  
17 specifically, each and every allegation in Paragraph 22.

18 23. Answering Paragraph 23 of the Complaint, Paragraph 23 contains legal argument not  
19 requiring an answer. HSBC Bank denies the implications that there are numerous similarly situated  
20 current and former employees who would benefit from the issuance of a court supervised notice of  
21 the present lawsuit and the opportunity to join in the present lawsuit. To the extent an answer is  
22 required, HSBC Bank denies, generally and specifically, each and every other allegation in  
23 Paragraph 23.

#### 24 CLASS ACTION ALLEGATIONS

25 24. Answering Paragraph 24 of the Complaint, generally no answer is required to  
26 Paragraph 24, which merely defines the nature of the action, the alleged classes and on whose behalf  
27 Plaintiffs' claims are asserted. HSBC Bank admits that Plaintiffs bring this action pursuant to Rule  
28 23 of the Federal Rules of Civil Procedure and that Plaintiffs seek to represent the classes of persons

1 described in Paragraph 24. HSBC Bank denies the implication that it engaged in any violations  
2 alleged in Paragraph 24 and denies the implication that Plaintiffs or putative class members were  
3 erroneously denied anything referenced in Paragraph 24. Answering Paragraph 24 of the Complaint,  
4 HSBC Bank denies, generally and specifically, each and every other allegation in Paragraph 24.

5 25. Answering Paragraph 25 of the Complaint, Paragraph 25 contains legal argument not  
6 requiring an answer. HSBC Bank denies the implication that the proposed classes are so numerous  
7 as to make the case suitable for class treatment. To the extent an answer is required, HSBC Bank  
8 denies, generally and specifically, each and every allegation in Paragraph 25.

9 26. Answering Paragraph 26 of the Complaint, Paragraph 26 contains legal argument not  
10 requiring an answer. HSBC Bank denies the implication that Plaintiffs' claims are typical of the  
11 proposed class' claims so as to make the case suitable for class treatment. To the extent an answer is  
12 required, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 26.

13 27. Answering Paragraph 27 of the Complaint, Paragraph 27 contains legal argument not  
14 requiring an answer. HSBC Bank denies the implication that a class action is the superior method to  
15 resolve Plaintiffs' or the proposed class' claims. To the extent an answer is required, HSBC Bank  
16 denies, generally and specifically, each and every allegation in Paragraph 27.

17 28. Answering Paragraph 28 of the Complaint, Paragraph 28 contains legal argument not  
18 requiring an answer. HSBC Bank denies the implication that Plaintiffs are adequate representatives  
19 so as to make the case suitable for class treatment. To the extent an answer is required, HSBC Bank  
20 denies, generally and specifically, each and every allegation in Paragraph 28.

21 29. Answering Paragraph 29 and subparagraphs A through I of the Complaint,  
22 Paragraph 29 and subparagraphs A through I contain legal argument not requiring an answer. HSBC  
23 Bank denies the implication that common questions of law and fact exist so as to make the case  
24 suitable for class treatment. To the extent an answer is required, HSBC Bank denies, generally and  
25 specifically, each and every allegation in Paragraph 29 and subparagraphs A through I.

26 30. Answering Paragraph 30 of the Complaint, Paragraph 30 contains legal argument not  
27 requiring an answer. HSBC Bank denies the implication that prosecutions of actions by or against  
28 individuals would result in inconsistent or varying adjudications so as to make the case suitable for



1 class treatment. To the extent an answer is required, HSBC Bank denies, generally and specifically,  
2 each and every allegation in Paragraph 30.

3 31. Answering Paragraph 31 of the Complaint, Paragraph 31 contains legal argument not  
4 requiring an answer. HSBC Bank denies the implication that this case is suitable for class treatment.  
5 To the extent an answer is required, HSBC Bank denies, generally and specifically, each and every  
6 allegation in Paragraph 31.

7 32. Answering Paragraph 32 of the Complaint, HSBC Bank lacks information sufficient  
8 to form a belief as to the truth of the allegation that Plaintiffs intend to send notice to all members of  
9 the proposed class to the extent required by Rule 23 or that the names and addresses of the proposed  
10 class are available from HSBC Bank, as the allegation is related to proposed class members not yet  
11 named. On these bases, HSBC Bank denies the allegations in Paragraph 32.

12 **PLAINTIFF FREDERIC CHAUSSY INDIVIDUAL ALLEGATIONS**

13 33. Answering Paragraph 33 of the Complaint, HSBC Bank admits, on information and  
14 belief, that Chaussy filed a complaint and claim relating to alleged wage violations with the  
15 California Department of Labor Standards Enforcement (DLSE), Case No. 07-60632 DK.  
16 Answering Paragraph 33 of the Complaint, HSBC Bank denies, generally and specifically, each and  
17 every other allegation in Paragraph 33, including the implication that HSBC Mortgage or HSBC  
18 Bank committed wage violations.

19 34. Answering Paragraph 34 of the Complaint, HSBC Bank admits only that Chaussy  
20 discussed his DLSE complaint and claim with a representative(s) of HSBC Mortgage and that HSBC  
21 Mortgage received notice that Chaussy's complaint and claim would be processed. HSBC Bank  
22 denies, generally and specifically, each and every allegation in Paragraph 34.

23 35. Answering Paragraph 35 of the Complaint, HSBC Bank denies, generally and  
24 specifically, each and every allegation in Paragraph 35.

25 36. Answering Paragraph 36 of the Complaint, HSBC Bank admits only that Chaussy  
26 discussed his DLSE complaint and claim with a representative(s) of HSBC Mortgage and that  
27 Chaussy's deficient productivity was discussed with him. HSBC Bank denies, generally and  
28 specifically, each and every other allegation in Paragraph 36.



1           37.     Answering Paragraph 37 of the Complaint, HSBC Bank admits only that Chaussy  
2 received disciplinary warnings regarding deficient productivity. HSBC Bank denies, generally and  
3 specifically, each and every other allegation in Paragraph 37.

4           38.     Answering Paragraph 38 of the Complaint, HSBC Bank admits only that Chaussy  
5 received disciplinary warnings regarding deficient productivity. HSBC Bank denies, generally and  
6 specifically, each and every other allegation in Paragraph 38.

7           39.     Answering Paragraph 39 of the Complaint, HSBC Bank admits only that Chaussy and  
8 a Human Resources representative representing HSBC Mortgage testified at a DLSE hearing.  
9 HSBC Bank denies, generally and specifically, each and every other allegation in Paragraph 39.

10          40.     Answering Paragraph 40 of the Complaint, HSBC Bank admits only that Chaussy  
11 was discharged from employment with HSBC Mortgage for poor production and poor performance.  
12 Paragraph 40 also contains legal argument not requiring an answer. To the extent an answer is  
13 required, HSBC Bank denies, generally and specifically, each and every other allegation in  
14 Paragraph 40.

15          41.     Plaintiff's Complaint does not contain a Paragraph 41. As such, no answer is  
16 required as to the missing Paragraph 41.

17          42.     Answering Paragraph 42 of the Complaint, Paragraph 42 contains legal argument not  
18 requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and  
19 specifically, each and every allegation in Paragraph 42.

20          43.     Plaintiff's Complaint does not contain a Paragraph 43. As such, no answer is  
21 required as to the missing Paragraph 43.

22          44.     Answering Paragraph 44 of the Complaint, HSBC Bank admits the allegations in  
23 Paragraph 44.

24          45.     Answering Paragraph 45 of the Complaint, Paragraph 45 contains legal argument not  
25 requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and  
26 specifically, each and every allegation in Paragraph 45.

**FIRST CLAIM FOR RELIEF****(Failure to Pay Overtime Compensation in Violation of the Fair Labor Standards Act)**

46. Answering Paragraph 46 of the Complaint, HSBC Bank incorporates by reference its answers to Paragraphs 1 through 45 of the Complaint.

47. Answering Paragraph 47 of the Complaint, HSBC Bank lacks information sufficient to form a belief as to the truth of the allegation that Plaintiffs signed the necessary consent forms to join this lawsuit or that Plaintiffs anticipate other consent forms will be signed, and therefore denies these allegations.

48. Answering Paragraph 48 of the Complaint, HSBC Bank admits that 20 U.S.C. § 203 covers certain employers, that HSBC Mortgage employs Wong, that HSBC Mortgage employed Chaussy, that HSBC Mortgage employed Shearn, that HSBC Mortgage employs other individuals who performed or perform job duties similar to or the same as Wong and/or Chaussy and/or Shearn, and that HSBC Mortgage and HSBC Bank had gross operating revenue in excess of \$500,000.00. HSBC Bank denies, generally and specifically, each and every other allegation in Paragraph 48.

49. Answering Paragraph 49 of the Complaint, HSBC Bank admits that non-exempt employees are entitled to pay at a rate of one and one-half times their regular rate of pay for work performed in excess of forty hours per work week under the FLSA. HSBC Bank denies, generally and specifically, each and every other allegation in Paragraph 49.

50. Answering Paragraph 50 of the Complaint, Paragraph 50 contains legal argument not requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 50.

51. Answering Paragraph 51 of the Complaint, Paragraph 51 contains legal argument not requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 51.

52. Answering Paragraph 52 of the Complaint, Paragraph 52 contains legal argument not requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 52.

53. Answering Paragraph 53 of the Complaint, generally no answer is required to Paragraph 53, which merely sets forth the types of relief sought by Plaintiffs. To the extent an answer is required, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 53.

54. Answering Paragraph 54 of the Complaint, generally no answer is required to Paragraph 54, which merely sets forth the types of relief sought by Plaintiffs. To the extent an answer is required, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 54.

## SECOND CLAIM FOR RELIEF

### (Failure to Pay Overtime Compensation in Violation of California Law)

55. Answering Paragraph 55 of the Complaint, HSBC Bank incorporates by reference its answers to Paragraphs 1 through 54 of the Complaint.

56. Answering Paragraph 56 of the Complaint, HSBC Bank admits that California Labor Code § 510 requires employers to pay overtime to certain employees under certain circumstances and that California Labor Code § 1198 makes it unlawful to employ certain persons for hours longer than certain hours set by the Industrial Welfare Commission or under certain conditions prohibited under certain wage orders of the Industrial Welfare Commission. HSBC Bank denies, generally and specifically, each and every other allegation in Paragraph 55.

57. Answering Paragraph 57 of the Complaint, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 57.

58. Answering Paragraph 58 of the Complaint, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 58.

## THIRD CLAIM FOR RELIEF

### (Waiting Time Penalties)

59. Answering Paragraph 59 of the Complaint, HSBC Bank incorporates by reference its answers to Paragraphs 1 through 58 of the Complaint.

60. Answering Paragraph 60 of the Complaint, HSBC Bank admits that certain individuals who performed services for HSBC Mortgage are no longer employed by HSBC

1 Mortgage. Except as expressly admitted herein, HSBC Bank denies, generally and specifically, each  
2 and every other allegation in Paragraph 60.

3 61. Answering Paragraph 61 of the Complaint, HSBC Bank denies, generally and  
4 specifically, each and every allegation in Paragraph 61.

#### 5 **FOURTH CLAIM FOR RELIEF**

##### 6 **(Failure to Provide Accurate Itemized Wage Statements)**

7 62. Answering Paragraph 62 of the Complaint, HSBC Bank incorporates by reference its  
8 answers to Paragraphs 1 through 61 of the Complaint.

9 63. Answering Paragraph 63 of the Complaint, Paragraph 63 contains legal arguments not  
10 requiring an answer. To the extent an answer is required, HSBC Bank admits that California Labor  
11 Code § 226(a) requires that California employers provide itemized wage statements and that  
12 California Labor Code § 226(e) provides certain remedies for a violation of California Labor Code  
13 § 226(a). HSBC Bank denies, generally and specifically, each and every other allegation in  
14 Paragraph 63.

15 64. Answering Paragraph 64 of the Complaint, HSBC Bank denies, generally and  
16 specifically, each and every allegation in Paragraph 64.

#### 17 **FIFTH CLAIM FOR RELIEF**

##### 18 **(Failure to Provide Rest Breaks and Meal Periods)**

19 65. Answering Paragraph 65 of the Complaint, HSBC Bank incorporates by reference its  
20 answers to Paragraphs 1 through 64 of the Complaint.

21 66. Answering Paragraph 66 of the Complaint, Paragraph 66 contains legal arguments not  
22 requiring an answer. To the extent an answer is required, HSBC Bank admits that California Labor  
23 Code § 512 prohibits an employer from employing certain employees for a work period of more than  
24 five hours per day without providing that employee with a meal period of not less than 30 minutes,  
25 or for a work period of more than 10 hours per day without providing that employee with a second  
26 meal period of not less than 30 minutes. HSBC Bank denies, generally and specifically, each and  
27 every other allegation in Paragraph 66.  
28

67. Answering Paragraph 67 of the Complaint, Paragraph 67 contains legal arguments not requiring an answer. To the extent an answer is required, HSBC Bank admits that Section 11 of Wage Order No. 4 includes language related to meal period requirements under California law. HSBC Bank denies, generally and specifically, each and every other allegation in Paragraph 67.

68. Answering Paragraph 68 of the Complaint, Paragraph 68 contains legal arguments not requiring an answer. To the extent an answer is required, HSBC Bank admits that Section 12 of Wage Order No. 4 includes language related to rest period requirements under California law. HSBC Bank denies, generally and specifically, each and every other allegation in Paragraph 68.

69. Answering Paragraph 69 of the Complaint, Paragraph 69 contains legal arguments not requiring an answer. To the extent an answer is required, HSBC Bank admits that California Labor Code § 226.7 prohibits certain employees from being denied meal and rest periods as mandated under California law and imposes a penalty in the amount of one hour's wages for violations of the meal and rest period provisions of the California Industrial Welfare Commission wage orders. Except as expressly admitted herein, HSBC Bank denies, generally and specifically, each and every other allegation in Paragraph 66.

70. Answering Paragraph 70 of the Complaint, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 70.

## SIXTH CLAIM FOR RELIEF

**(Unfair Practice under the Unfair Competition Act)**

71. Answering Paragraph 71 of the Complaint, HSBC Bank incorporates by reference its answers to Paragraphs 1 through 70 of the Complaint.

72. Answering Paragraph 72 of the Complaint, Paragraph 72 contains legal arguments not requiring an answer. To the extent an answer is required, HSBC Bank admits that California Business and Professions Code § 17200 prohibits certain types of competition by prohibiting unlawful or unfair business acts and practices. HSBC Bank denies the implication that it engaged in any unlawful or unfair business practices. Except as expressly admitted herein, HSBC Bank denies, generally and specifically, each and every other allegation in Paragraph 72.

1           73.     Answering Paragraph 73 of the Complaint, HSBC Bank denies, generally and  
2 specifically, each and every allegation in Paragraph 73.

3                                   **SEVENTH CLAIM FOR RELIEF**

4                   **(Retaliation for Engaging in Activity Protected by the Labor Commissioner)**

5           74.     Answering Paragraph 74 of the Complaint, HSBC Bank incorporates by reference its  
6 answers to Paragraphs 1 through 73 of the Complaint.

7           75.     Answering Paragraph 75 of the Complaint, Paragraph 75 contains a reference to  
8 statute not requiring an answer. To the extent an answer is required, HSBC Bank admits that  
9 California Labor Code § 98.6 includes language set forth in Paragraph 75 related to not  
10 discriminating against an employee or applicant who institutes proceedings which are under the  
11 jurisdiction of the Labor Commissioner or because the employee has initiated an action pursuant to  
12 Labor Code § 2699. To the extent that the statutory reference is incomplete, HSBC Bank denies any  
13 remaining adverse allegations of implications.

14           76.     Answering Paragraph 76 of the Complaint, HSBC Bank denies the implication that it  
15 engaged in any retaliation or other unlawful employment practice. HSBC Bank denies, generally  
16 and specifically, each and every allegation in Paragraph 76.

17                                   **EIGHTH CLAIM FOR RELIEF**

18                   **(Retaliation for Engaging in Activity Protected by the Fair Labor Standards Act)**

19           77.     Answering Paragraph 77 of the Complaint, HSBC Bank incorporates by reference its  
20 answers to Paragraphs 1 through 76 of the Complaint.

21           78.     Answering Paragraph 78 of the Complaint, Paragraph 78 contains legal arguments not  
22 requiring an answer. To the extent an answer is required, HSBC Bank admits that 29 U.S.C.  
23 § 215(a)(3) makes it unlawful to discharge or discriminate against an employee because the  
24 employee has engaged in activity protected under this statutory section. HSBC Bank denies,  
25 generally and specifically, each and every other allegation in Paragraph 78.

26           79.     Answering Paragraph 79 of the Complaint, Paragraph 79 contains legal arguments not  
27 requiring an answer. To the extent an answer is required, HSBC Bank admits that the FLSA's anti-  
28

1 retaliation provision encourages certain reporting and protects certain employees. HSBC Bank  
 2 denies, generally and specifically, each and every other allegation in Paragraph 79.

3 80. Answering Paragraph 80 of the Complaint, HSBC Bank denies the implication that it  
 4 engaged in any retaliation or other unlawful employment practice. HSBC Bank denies, generally  
 5 and specifically, each and every allegation in Paragraph 80.

### 6 **NINTH CLAIM FOR RELIEF**

7 **(Violation of New Jersey Wage and Hour Law, N.J.S.A. § 34:11, et seq., and N.J.A.C. § 12:56**  
 8 **et seq. – On Behalf of the New Jersey Named Plaintiff and New Jersey Class)**

9 81. Answering Paragraph 81 of the Complaint, HSBC Bank incorporates by reference its  
 10 answers to Paragraphs 1 through 80 of the Complaint.

11 82. Answering Paragraph 82 of the Complaint, Paragraph 82 contains legal arguments not  
 12 requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and  
 13 specifically, each and every allegation in Paragraph 82.

14 83. Answering Paragraph 83 of the Complaint, Paragraph 83 contains legal arguments not  
 15 requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and  
 16 specifically, each and every allegation in Paragraph 83.

17 84. Answering Paragraph 84 of the Complaint, Paragraph 84 contains legal arguments not  
 18 requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and  
 19 specifically, each and every allegation in Paragraph 84.

20 85. Answering Paragraph 85 of the Complaint, Paragraph 85 contains legal arguments not  
 21 requiring an answer. In addition, the Court has dismissed the Ninth Claim to the extent such cause  
 22 of action is based on a claim that Defendants failed to keep true and accurate records of hours  
 23 worked in violation of § 34:11-56a20 of the New Jersey Statutes. To the extent an answer is  
 24 required, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 85.

25 86. Answering Paragraph 86 of the Complaint, HSBC Bank denies, generally and  
 26 specifically, each and every allegation in Paragraph 86.

27 87. Answering Paragraph 87 of the Complaint, HSBC Bank denies, generally and  
 28 specifically, each and every allegation in Paragraph 87.



**TENTH CLAIM FOR RELIEF****(Failure to Pay Overtime Compensation in Violation of New York Law)**

88. Answering Paragraph 88 of the Complaint, HSBC Bank incorporates by reference its answers to Paragraphs 1 through 87 of the Complaint.

89. Answering Paragraph 89 of the Complaint, Paragraph 89 contains legal arguments not requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 89.

90. Answering Paragraph 90 of the Complaint, Paragraph 90 contains legal arguments not requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 90.

91. Answering Paragraph 91 of the Complaint, Paragraph 91 contains legal argument not requiring an answer. To the extent an answer is required, HSBC Bank admits New York law requires payment of overtime compensation to non-exempt employees, and requires that an employer pay non-exempt employees for all hours worked at an agreed upon rate of pay. Except as expressly admitted herein, HSBC Bank denies, generally and specifically, each and every other allegation in Paragraph 91.

92. Answering Paragraph 92 of the Complaint, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 92.

93. Answering Paragraph 93 of the Complaint, Paragraph 93 contains legal arguments not requiring an answer. To the extent an answer is required, HSBC Bank denies, generally and specifically, each and every allegation in Paragraph 93.

94. Answering Paragraph 94 of the Complaint, generally no answer is required to Paragraph 94, which merely sets forth the types of relief sought by Plaintiffs. HSBC Bank denies the implication that it engaged in any violations alleged in Paragraph 94, as well as the implication that Plaintiffs or putative class members are entitled to the relief referenced in Paragraph 94. HSBC Bank denies, generally and specifically, each and every other allegation in Paragraph 94.

95. Answering Paragraph 95 of the Complaint, generally no answer is required to Paragraph 95, which merely sets forth a type of relief sought by Plaintiffs. HSBC Bank denies the

1 implication that it engaged in any violations alleged in Paragraph 95, as well as the implication that  
2 Plaintiffs or putative class members are entitled to the relief referenced in Paragraph 95. HSBC  
3 Bank denies, generally and specifically, each and every other allegation in Paragraph 95.

4 **AFFIRMATIVE DEFENSES**

5 AS A FIRST, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank alleges  
6 that the Complaint, and each and every cause of action contained therein, fails to properly state a  
7 claim upon which relief can be granted.

8 AS A SECOND, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
9 alleges that it has no liability for wages, penalties, interest, or other compensation or amounts that  
10 may be due Plaintiffs because HSBC Bank was not Plaintiffs' or putative plaintiffs' or class  
11 members' employer within the definition of, but not limited to, the federal Fair Labor Standards Act,  
12 the California Labor Code, the California Industrial Welfare Commission wage orders, New Jersey  
13 State Wage and Hour Law or New York Labor Law.

14 AS A THIRD, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank alleges  
15 that all or portions of Plaintiffs' claims are barred by the applicable statutes of limitation.

16 AS A FOURTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
17 alleges that Plaintiffs were not entitled to payment of overtime premiums because they were  
18 employees exempted from overtime requirements pursuant to, but not limited to, 29 U.S.C.  
19 § 213 *et seq.*, the California Labor Code, the provisions of the California Industrial Welfare  
20 Commission's wage orders, New Jersey State Wage and Hour Law and New York Labor Law.

21 AS A FIFTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank alleges  
22 that any violation of the Fair Labor Standards Act was not willful, and that all or portions of  
23 Plaintiffs' claims alleging violation of the Fair Labor Standards Act are barred by the applicable  
24 statute of limitations, including, but not limited to, 29 U.S.C. § 255.

25 AS A SIXTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank alleges  
26 that any violation of the Fair Labor Standards Act was an act or omission made in good faith and  
27 HSBC Bank had reasonable grounds for believing that the act or omission was not a violation of the  
28

1 Fair Labor Standards Act so that, pursuant to 29 U.S.C. § 260, liquidated damages cannot be  
2 awarded.

3 AS A SEVENTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
4 alleges that the amounts described in section 7(e) of the Fair Labor Standards Act, 29 U.S.C.  
5 § 207(e), must be excluded from the regular rate on which any overtime due is calculated under  
6 federal, California, New York or New Jersey law.

7 AS AN EIGHTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
8 alleges that its business actions or practices were not “unfair” within the meaning of California  
9 Business and Professions Code § 17200 *et seq.*

10 AS A NINTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank alleges  
11 that its business actions or practices were not “unlawful” within the meaning of California Business  
12 and Professions Code § 17200 *et seq.*

13 AS A TENTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank alleges  
14 that its business actions or practices were not “harmful” within the meaning of California Business  
15 and Professions Code § 17200 *et seq.*

16 AS AN ELEVENTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
17 alleges that its business actions or practices were not “fraudulent” or “deceptive” within the meaning  
18 of California Business and Professions Code § 17200 *et seq.*

19 AS A TWELFTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
20 alleges that Plaintiffs’ claims under California Labor Code § 226.7 are barred because Plaintiffs lack  
21 a private right of action to bring suit under that statute.

22 AS A THIRTEENTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
23 alleges that the Complaint fails to properly state a claim for penalties under California Labor Code §  
24 203 because any failure to pay wages found to be due Plaintiffs was not willful.

25 AS A FOURTEENTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
26 alleges that the Complaint fails to properly state a claim for penalties under California Labor Code §  
27 203 because there is a bona fide, good faith dispute with respect to HSBC Bank’s obligation to pay  
28 any wages.

1 AS A FIFTEENTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
2 alleges that Plaintiffs' claims are barred by the doctrine of estoppel.

3 AS A SIXTEENTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
4 alleges that Plaintiffs lack standing to bring their claims as to all or a portion of the claims presented  
5 in the Complaint.

6 AS A SEVENTEENTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
7 Bank alleges that all or portions of Plaintiffs' claims are barred by the doctrine of laches.

8 AS AN EIGHTEENTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
9 Bank alleges that all or portions of Plaintiffs' claims are barred by the doctrine of unclean hands.

10 AS A NINETEENTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
11 alleges that all or portions of Plaintiff's claims are barred by the doctrine of avoidable consequences  
12 because reasonable steps were taken to prevent and correct allegedly improper wage payments,  
13 Plaintiffs unreasonably failed to use the preventative and corrective opportunities provided to them,  
14 and the reasonable use of those procedures would have prevented at least some, if not all, of the  
15 harm Plaintiffs allegedly suffered.

16 AS A TWENTIETH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
17 alleges that Plaintiffs and putative plaintiffs or class members were treated fairly and in good faith,  
18 and that all actions taken with respect to Plaintiffs were taken for lawful business reasons and in  
19 good faith.

20 AS A TWENTY-FIRST, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
21 Bank alleges that Plaintiffs and putative plaintiffs or class members were not entitled to mandatory  
22 meal and rest periods under California law, nor are they entitled to recover penalties under California  
23 law for allegedly missed meal or rest periods, because they were exempted from meal and rest  
24 period requirements pursuant to the provisions of the California Industrial Welfare Commission  
25 wage orders.

26 AS A TWENTY-SECOND, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
27 Bank alleges that Plaintiffs' prosecution of this action by Plaintiffs as a representative of the general  
28 public under California Business and Professions Code § 17200 *et seq.*, as applied to the facts and

1 circumstances of this case, would constitute a denial of HSBC Bank's substantive and procedural  
2 due process rights under the Fourteenth Amendment of the United States Constitution and under the  
3 California Constitution.

4 AS A TWENTY-THIRD, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
5 Bank alleges that the Complaint fails to properly state a claim for injunctive relief.

6 AS A TWENTY-FOURTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
7 Bank alleges that Plaintiffs are not entitled to equitable relief insofar as they have adequate remedies  
8 at law.

9 AS A TWENTY-FIFTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
10 Bank alleges that all or portions of Plaintiffs' claims are barred by the doctrine of waiver and release.

11 AS A TWENTY-SIXTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
12 Bank alleges that Plaintiffs and putative plaintiffs or class members consented to, encouraged, or  
13 voluntarily participated in all actions taken, if any.

14 AS A TWENTY-SEVENTH, SEPARATE, AND AFFIRMATIVE DEFENSE,  
15 HSBC Bank alleges that any unlawful or other wrongful acts of any person(s) employed by  
16 Defendants, or any of them, were outside of the scope of his or her authority and such acts, if any,  
17 were not authorized, ratified, or condoned, nor did Defendants know or have reason to be aware of  
18 such alleged conduct.

19 AS A TWENTY-EIGHTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
20 Bank alleges that Plaintiffs' claims are barred in whole or in part by the doctrine of accord and  
21 satisfaction.

22 AS A TWENTY-NINTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
23 Bank alleges that Plaintiffs' claims for recovery pursuant to California Business and Professions  
24 Code § 17200 *et seq.* are barred with respect to penalties of any nature.

25 AS A THIRTIETH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
26 alleges that, to the extent Plaintiffs seek statutory or other penalties, such claims must comport with  
27 the due process requirements of *State Farm v. Campbell*, 538 U.S. 408 (2003).  
28

1 AS A THIRTY-FIRST, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
2 Bank alleges that the Complaint and each cause of action therein, or some of them, is barred because  
3 the applicable wage orders of the California Industrial Welfare Commission or the provisions of the  
4 California Labor Code are unconstitutionally vague and ambiguous and violate HSBC Bank's rights  
5 under the United States and California Constitutions to, among other things, due process of law.

6 AS A THIRTY-SECOND, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
7 Bank alleges that Plaintiffs' prayers for restitution or injunctive relief under California Business and  
8 Professions Code § 17200 *et seq.* are barred with respect to any alleged violations that have  
9 discontinued, ceased, or are not likely to recur.

10 AS A THIRTY-THIRD, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
11 Bank alleges that Plaintiffs' claims are barred in whole or in part because Plaintiffs' alleged injuries  
12 were not proximately caused by any unlawful policy, custom, practice and/or procedure promulgated  
13 and/or tolerated by any Defendant.

14 AS A THIRTY-FOURTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
15 Bank alleges that the Complaint fails to properly state a claim for interest, as the damages claimed  
16 are not sufficiently certain to support an award of interest.

17 AS A THIRTY-FIFTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
18 Bank alleges that the Complaint fails to properly state a claim for recovery of costs and attorneys'  
19 fees under California Labor Code §§ 218.5 or 1194, California Code of Civil Procedure § 1021.5,  
20 California Business and Professions Code § 17200 *et seq.*, 29 U.S.C. § 216(b), or any other basis.

21 AS A THIRTY-SIXTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
22 Bank alleges that the Complaint fails to properly state a claim for recovery of compensatory  
23 damages based upon wages due and owing, restitution, or any other basis.

24 AS A THIRTY-SEVENTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
25 Bank alleges that further investigation and discovery will reveal that defendants are entitled to an  
26 offset against any relief due Plaintiffs, and/or those persons they seek to represent, based upon their  
27 respective wrongful conduct and/or monies owed..  
28

1 AS A THIRTY-EIGHTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
2 Bank alleges that the Complaint fails to properly state a claim that may be maintained as a class  
3 action under Rule 23 of the Federal Rules of Civil Procedure or any corresponding state law  
4 requirements regarding class actions.

5 AS A THIRTY-NINTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
6 Bank alleges that Plaintiffs cannot fairly and adequately represent the interests of the purported  
7 class.

8 AS A FORTIETH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
9 alleges that Plaintiffs are not proper parties to the action.

10 AS A FORTY-FIRST, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
11 alleges that certification of a class, as applied to the facts and circumstances of this case, would  
12 constitute a denial of its rights to trial by jury and to substantive and procedural due process, in  
13 violation of the Fourteenth Amendment of the United States Constitution and the Due Process and  
14 Equal Protection Clauses of the California Constitution.

15 AS A FORTY-SECOND, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
16 Bank alleges that this suit may not be properly maintained as a class action because: (a) Plaintiffs  
17 have failed to plead and/or cannot establish the necessary procedural elements for, class treatment;  
18 (b) a class action is not an appropriate method for the fair and efficient adjudication of the claims  
19 described in the Complaint; (c) common issues of fact or law do not predominate; to the contrary,  
20 individual issues predominate; (d) Plaintiffs' claims are not representative or typical of the claims of  
21 the putative class; (e) Plaintiffs are not proper class representatives; (f) the named Plaintiffs and  
22 alleged putative class counsel are not adequate representatives for the alleged putative class; (g)  
23 Plaintiffs cannot satisfy any of the requirements for class action treatment, and class action treatment  
24 is neither appropriate nor constitutional; (h) there is not a well-defined community of interest in the  
25 questions of law or fact affecting Plaintiffs and the members of the alleged putative class; (i) the  
26 alleged putative class is not ascertainable, nor are its members identifiable; and (j) to the extent the  
27 alleged putative class is ascertainable and its members are identifiable, the number of putative class  
28 members is too small to meet the numerosity requirement for a class action.



1 AS A FORTY-THIRD, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
2 alleges that this suit may not be properly maintained as a collective action because: (a) Plaintiffs  
3 have failed to plead and/or cannot establish the necessary procedural elements for collective action  
4 treatment; (b) a collective action is not an appropriate method for the fair and efficient adjudication  
5 of the claims described in the Complaint; (c) common issues of fact or law do not predominate; to  
6 the contrary, individual issues predominate; (d) Plaintiffs' claims are not representative or typical of  
7 the claims of the putative class; (e) Plaintiffs are not proper class representatives; (f) the named  
8 Plaintiffs and alleged putative class counsel are not adequate representatives for the alleged putative  
9 class; (g) Plaintiffs cannot satisfy any of the requirements for collective action treatment, and  
10 collective action treatment is neither appropriate nor constitutional; (h) there is not a well-defined  
11 community of interest in the questions of law or fact affecting Plaintiffs and the members of the  
12 alleged putative class; (i) the alleged putative class is not ascertainable, nor are its members  
13 identifiable; and (j) to the extent the alleged putative class is ascertainable and its members are  
14 identifiable, the number of putative class members is too small to meet the numerosity requirement  
15 for a collective action.

16 AS A FORTY-FOURTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
17 Bank alleges that the adjudication of the claims of the putative class through generalized class-wide  
18 proof would violate its rights to trial by jury under the United States Constitution and the California  
19 Constitution.

20 AS A FORTY-FIFTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
21 alleges that the Complaint fails to properly state facts sufficient to entitle Plaintiffs or putative class  
22 members to any relief, including, but not limited to, its failure to properly state facts sufficient to  
23 identify any actual or threatened harm to Plaintiffs beyond pure speculation, its failure to allege facts  
24 showing that Plaintiffs have no adequate remedy at law, and that the proposed relief would impose  
25 an undue burden on both HSBC Bank and the Court and be so uncertain as to be wholly  
26 unenforceable.

27 AS A FORTY-SIXTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC Bank  
28 opposes class certification and disputes the propriety of class treatment. If the Court certifies a class

1 in this case over HSBC Bank's objections, then HSBC Bank asserts the affirmative defenses set  
2 forth herein against each and every member of the certified class.

3 AS A FORTY-SEVENTH, SEPARATE, AND AFFIRMATIVE DEFENSE, HSBC  
4 Bank alleges that Plaintiffs' claim for relief under New York law may not be proceed as a class  
5 action by operation of New York Civil Practice Law and Rules § 901(b).

6 **PRAYER FOR RELIEF**

7 WHEREFORE, HSBC Bank prays for judgment from this Court as follows:

- 8 1. Plaintiffs take nothing by this action;
- 9 2. That the Complaint be dismissed with prejudice and that judgment be entered  
10 against Plaintiffs and in favor of HSBC Bank on each of Plaintiffs' causes of action;
- 11 3. That Plaintiffs be ordered to pay HSBC Bank's costs and attorneys' fees,  
12 including, but not limited to, costs and attorneys' fees provided under California Labor Code  
13 § 218.5; and
- 14 4. Such other and further relief as the Court deems appropriate and proper.

15 Dated: September 10, 2007

16  
17 \_\_\_\_\_/s/  
18 GEORGE J. TICHY, II  
19 MICHELLE R. BARRETT  
20 LITTLER MENDELSON  
21 A Professional Corporation  
22 Attorneys for Defendants  
23 HSBC MORTGAGE CORPORATION (USA)  
24 and HSBC BANK USA, N.A.

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